PUBLIC PROSECUTOR

v.

KINYANG MUNGGANG & ORS.

HIGH COURT BORNEO
HAIDAR MOHD. NOOR J
[CRIMINAL TRIAL NO. KG. 2 OF 1985]
11 SEPTEMBER 1989

CRIMINAL PROCEDURE: *Charge of murder against the accused - Cautioned statement ruled inadmissible - Second and third accused acquitted and discharged as no evidence was available against them - Circumstantial evidence against first accused - Inference to be drawn from such evidence - Whether first accused cast a reasonable doubt on the prosecution case.*

The first accused was charged with the offence of murder under s. 302 read with s. 34 of the Penal Code with the second and third accused for having committed murder in furtherance of the common intention of them all by causing the death of Buda ak. Jamal on 17 February 1985 at 8.55 a.m. in the secondary jungle off Jalan BDC, Stampin, Kuching.

After a trial within a trial the Court ruled that cautioned statements of the three accused were inadmissible. As a result the second and third accused were acquitted and discharged as there was no other evidence against them.

The prosecution adduced circumstantial evidence against the first accused. The first accused in his defence merely denied the charge and the evidence of the prosecution witnesses remained unchallenged and uncontroverted.

Held:
The irresistible inference to be drawn from the circumstantial evidence which was adduced by the prosecution which was not challenged by the first accused pointed to the commission of the crime by the first accused. The first accused had failed to cast a reasonable doubt on the prosecution's case.

[First accused found guilty.]

Legislation referred to:
Evidence Act 1950, s. 27
Penal Code, ss. 34, 302

For the complainant - Abdul Rahman Sebli for DPP; Jabatan Peguam Negara Malaysia, Sarawak, Kuching
For the 1st accused - Clement Eddy; M/s. Sulong Matjeraie & Co. Kuching
For the 2nd accused - Idris Buang; M/s. Idris Buang, Ibrahim Baki & Co. Kuching
For the 3rd accused - Charles Kanavathi; M/s. C.M. Kanavathi & Co. Kuching

JUDGMENT

Haidar Mohd. Noor J:

Kinyang ak. Munggang, the first accused, was charged with the offence of murder under s. 302 read with s. 34 of the Penal Code with two others namely, Sebawi bin Met (the second accused) and Sebawi bin Bujang (the third accused). They were charged for having committed murder in furtherance of the common intention of them all by causing the death of Buda ak.

Jamal on 17 February 1985 at about 8.55a.m. in the secondary jungle, off Jalan BDC, Stampin, Kuching. All of them claimed trial to the said charge and they were each defended by assigned Counsels.

At the end of the prosecution case the Deputy Public Prosecutor, A. Rahman applied for a slight amendment to the charge, that is, the deceased's name should read "Buda ak. Jamal" instead of "Budah ak. Jamal". All the Counsels had no objection to the said amendment and I allowed the application accordingly.

The prosecution attempted to introduce the cautioned statements of the three accused persons as part of the prosecution case. All the three Counsels indicated to the Court that they will be objecting to the admissibility of the cautioned statements. As a result a trial within trial was held to determine the admissibility of the cautioned statements. After a trial within trial and after hearing the submissions of Counsels for the prosecution and the defence I reserved my ruling. Subsequently I delivered a written ruling rejecting the cautioned statements of all the three accused persons giving my reasons therein.

In view of my ruling and as there was no other evidence at all in respect of the second and third accused, the Deputy Public Prosecutor rightly conceded that they should be acquitted and discharged of the charge. In the circumstances I ordered the acquittal and discharge of the second and the third accused without calling for their defence. In respect of the first accused I was satisfied that there was a strong circumstantial evidence against him and directed that his defence be called in respect of the charge.

The prosecution adduced the following circumstantial evidence to support the charge against the first accused.

The accused represented to the deceased that his father-in-law, Edie ak. Inyah (PW6) had a piece of the land at Stampin for sale. The price of the land was RM4,000 per acre. There was discussion between the accused and the deceased about the sale of the land. In support thereof the prosecution called the deceased's wife Racha ak. Along (PW8), the brothers-in-law Neging ak. Rimong (PW9) and Buan ak. Along (PW10). There was evidence that the deceased was keen to buy the land.

Evidence was adduced by the prosecution through one Jamal Gerang (PW7), presently a Member of Parliament but who on 16 February 1985 worked as a bank officer with Bank Bumiputra, Kuching branch that the deceased met him and withdrew cash from the bank through his account with the bank's branch in Sri Aman. The cash withdrawn was in the denomination of one piece of RM1,000 note, 4 pieces of RM500 notes and 5 notes of RM100. PW7 personally handed the cash to the deceased. According to PW7, after the withdrawal, the deceased invited him for a drink at the coffeeshop near to the bank. PW7 and the deceased were friends and classmates. At the coffeeshop PW7 met the accused who together with the deceased and PW7 had drinks there. The deceased told PW7 that he wanted to buy a piece of land at Stampin. At the coffeeshop PW7 inquired that the price for the land at Stampin was cheap and the deceased pointed by mouth towards the accused as his friend who recommended the sale of the land.

On the afternoon of 16 February 1985 (the same day) the deceased and his wife (PW8) went to the accused's house to finalise the transaction regarding the land. PW8 said that the accused told the deceased that he could not close the deal that day as his father-in-law (PW6) was not in and the land could not be surveyed that day. He said that it could be done the next day, that is, 17 February 1985. Both PW8 and the deceased then left the accused's house.

On the next day, the deceased left his house at about 7.30a.m. to go to the accused's house for the purpose of paying for the land. PW8 said that the deceased had with him RM4000 for payment of the land. The deceased told this to his wife (PW8) on that morning. The deceased left alone in a car no. KC2534 belonging to his brother-in-law (PW9). This evidence was confirmed by PW9 himself though he did not see the money personally.

PW8 waited for the return of her husband that day and when the deceased did not return home until about 2.30a.m., she and her brother-in-law (PW9) went to the accused's house to inquire about the deceased.

According to PW8 the accused told them that the deal did not go through as his father-in-law (PW6) was not in and the deceased went off after that. PW8 said that the accused looked like he has no mood and looked shivery and scared. Both of them then left for home.

On the morning of 18 February 1985 PW8 went around the town and the relatives' houses to look for the deceased without success. At around 2.30p.m. that day she went to the accused's house again with PW9. The accused was not in. They met his father-in-law (PW6) who told them that the accused left early that morning for Pantu. Both of them returned home and PW9 lodged a police report in respect of the missing PW8's husband, Buda ak. Jamal.

On 20 February 1985 the body of Buda ak. Jamal was found by the police in a secondary jungle off Jalan BDC, Stampin. The car, KC 2534 used by the deceased on 17 February 1985 was found by the roadside. The deceased's body was duly identified by PW8 as that of her late husband to the police as well as to the doctor (PW1) who performed the post-mortem.

The prosecution adduced evidence through the accused's brother-in-law, Freddie ak. Gustan (PW14) where PW14 said that the accused and his family came to his house, which is about five houses away from the accused's house on 17 February 1985 at about 7.00p.m. and the accused invited him to go to Selantik with him the next morning. PW14 agreed to go. On the morning of 18 February 1985 both of them left in a taxi at about 7.00a.m. The accused paid for the RM60 taxi fare. On the way to Selantik they stopped at Serian where the accused bought some pork and prawns. They also stopped at Sungai Tenggam where the accused bought two cartoons of beer, two bottles of liquor and two cartoons of cigarettes. The accused paid for them. They spent the night at Selantik. That night, according to PW14, the accused showed his parents, sisters and brothers a RM1,000 note and four RM500 notes with the remark that if they had not seen a RM1,000 note he would show one to them.

The following morning, the accused together with PW14 took his parents, brothers and sisters on a shopping spree at Pantu Bazaar where he bought a black and white colour television set for RM390, two pieces of trousers, 4 pieces of underwear, one mosquito net, 4 pieces of cassette tapes, 2 wrist watches and one pair of sunglass. He paid cash for the items. The purchase of the television set by the accused was confirmed by the shopkeeper (PW12). PW12 further said that the accused did not bargain for it and paid in a RM500 note. The accused later bought from PW12, a long trousers for RM26 for which he paid in a RM500 note and again without bargaining.

The accused's father-in-law (PW6) was called by the prosecution and he said that he had no land in Stampin though his wife had one in which they and the accused and his family were staying in February 1985. He further said that he did not intend to sell the land at Stampin or any other lands belongings to him and the accused did not at anytime tell him that he (the accused) wanted to sell the land at Stampin. Neither did the accused at anytime discuss with him about the sale of land anywhere at all.

The sum total of the circumstantial evidence, according to the prosecution, would show that the accused falsely represented to the deceased about the sale of land in Stampin and in actual fact the irresistable inference to be drwn is that the motive of the accused was to kill and rob the deceased of the money allegedly for the sale of the land.

The prosecution sought to adduce evidence under s. 27 of the Evidence Act 1950, that is, the accused leading the police after his arrest to the recovery of a parang (P7). The parang (P7) when recovered had no traces of any blood and this was confirmed by the chemist. According to Dr. Jehan (PW1) a parang of the type like P7 could have been used to inflict those injuries on the deceased. This piece of evidence was not of much help to the prosecution case as it cannot be inferred that it was the parang that was used to inflict those injuries. Anyway this is a question of fact for the assessors to come to their own findings.

According to PW1, from the injuries sustained by the deceased, it was her opinion that more than one person could have inflicted those injuries. This again was left for the assessors to decide as it was a question of fact.

The accused in his defence merely denied the charge. His defence was in the circumstances a short and straight forward one. Most of the evidence adduced through the prosecution witnesses remained unchallenged and incontroverted. I was satisfied that the various links had been satisfactorily made out by the prosecution and the circumstances pointed to the accused as the probable assailant or one of the probable assailant with reasonable definiteness and in proximity to the deceased as regards time and situation, and he offered no explanation, which if accepted, though not proved, could afford a reasonable basis for a conclusion on the entire case, consistent with his innocence, such absence of explanation or false explanation would itself be an additional link which completed the chain. The irresistible inference to be drawn from the whole history of the case pointed so strongly to the commission of the crime by the accused or with other persons that the defence case appeared on the face of it impossible or highly impossible. I was satisfied that the accused failed to cast any reasonable doubt on the prosecution case or as to the accused's guilt. As such I concurred with the finding of the assessors that the accused with other persons committed the offence of murder by causing the death of Buda ak. Jamal, the deceased. Accordingly I found the accused guilty and convicted him. I sentenced him to death, to be hanged by the neck till he is dead.

Also found at [1990] 1 CLJ 322